

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEARBORN AVENUE BISTRO, INC.,
a Michigan corporation d/b/a BTs,

Plaintiff,

vs.

CASE NO. 04-CV-73900-DT
HON. LAWRENCE P. ZATKOFF

THE CITY OF DEARBORN, a
Michigan municipal corporation,

Defendant.

OPINION AND ORDER

This matter is before the Court on Plaintiff's "First Interim Motion for Attorneys Fees" (Docket No. 35) and Defendant's "Motion to Stay Plaintiff's Motion for Order Awarding Attorneys Fees" (Docket #51).

In this case, the Court entered Judgment in favor of Plaintiff on its claim that Defendant violated Plaintiff's substantive due process rights. Defendant then timely appealed the Court's ruling. Several days later, Plaintiff filed its Motion for Attorney Fees. Rather than filing an answer to Plaintiff's Motion for Attorney Fees, Defendant filed its Motion to Stay, wherein Defendant asked the Court to stay a decision on Plaintiff's Motion for Attorney Fees.

In its Motion to Stay, Defendant does not cite to any authority for its position and simply states that it would be "premature to award attorney's fees when the Defendant has not exhausted its appeals." The Court notes that there is no rule that precludes this Court from awarding attorney fees to a "prevailing" party prior to the other party exhausting its appeals. Moreover, the Sixth Circuit has held, on numerous occasions, that "the filing of a notice of appeal in the underlying action does not affect the district court's jurisdiction to consider a post-judgment motion for attorney fees." *See Jankovich v. Bowen*, 868 F.2d 867, 871 (6th Cir. 1989) (citing *Morgan v. Union Metal*

Mfg., 757 F.2d 792, 794 (6th Cir. 1985). Accordingly, the Court DENIES Defendant's Motion to Stay Plaintiff's Motion for Order Awarding Attorneys Fees.

Turning to Plaintiff's Motion for Attorney Fees, the Court finds that the interests of justice weigh in favor of affording Defendant an opportunity to respond, particularly as the Defendant's Motion to Stay was filed within the applicable time for filing a response to Plaintiff's Motion for Attorney Fees. Accordingly, the Court hereby ORDERS Defendant to file a response to Plaintiff's Motion for Attorney Fees on or before November 21, 2007.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: November 2, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on November 2, 2007.

s/Marie E. Verlinde
Case Manager
(810) 984-3290